

**PRELIMINARY DRAFT**

3/22/94

**ADVERTISING AGREEMENT**

This agreement (the "Agreement"), is entered into as of the 1st day of April, 1994, between Philip Morris Incorporated, a Virginia corporation with principal executive offices at 120 Park Avenue, New York, New York 10017 ("Advertiser"), and Team Headquarters, Inc., a \_\_\_\_\_ corporation with principal executive offices at 322 Vista Del Mar, Redondo Beach, California 90277-5485 ("Operator"), for advertising at Joe Robbie Stadium, a sports facility located in Miami, Florida ("Stadium").

1. Warranties

(a) Operator represents and warrants that pursuant to [an agreement with \_\_\_\_\_], the owner of the Stadium, Operator has the exclusive right to sell advertising space in the Stadium, and Operator further warrants that the fixed advertising space in the Stadium (collectively, the "Advertising System") comprises the fixed advertising space described in attached Exhibit A only.

(b) Operator represents and warrants that it has full and exclusive right and authority to enter into and perform this Agreement granting to Advertiser the rights set forth herein and that Operator's continuing performance of the Agreement does not require the approval or consent of any person or other entity.

(c) Operator represents and warrants that the Advertising System as defined herein, in the Stadium is and will remain free of all liens and encumbrances.

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2. Grant of Advertising Rights

Operator will install, within [ten days] of receipt from Advertiser, and maintain throughout the term of the Agreement, the following advertising to be supplied by Advertiser:

(a) Stadium Exterior Advertising:

- (i) one 14' high by 80' main scoreboard sign (east side), and identified as advertising location "\_\_\_" on Exhibit A ("Main Scoreboard Sign");
- (ii) one 4' high x 19'6" auxiliary scoreboard sign (behind [field goal][?], mid-level), and identified as advertising location "\_\_\_" on Exhibit A ("Auxiliary Scoreboard Sign"); and
- (iii) one 4' high x 32'6" wide corner clock sign (centerfield), and identified as advertising location "\_\_\_" on Exhibit A ("Corner Clock Sign");

(b) General Concourse Advertising:

- (i) twenty 31" high x 58" wide point-of-sale concession stand displays in locations throughout the Stadium to be agreed upon by the parties ("Concession Stand Displays"); and
- (ii) twelve 31" high x 37½" wide concourse signs in locations to be agreed upon by the parties ("Concourse Signs").

3. Advertising Copy, Installation and Maintenance

(a) Advertiser will select, and may change at any time, the design, layout and content of each advertisement. Advertiser will deliver to Operator advertising copy for MARLBORO or another product of Advertiser or its affiliates which product does not

compete with products of Operator's sponsors existing as of the date of the Agreement. If and when Advertiser changes an advertisement, Operator will install the substitute advertisement with ten days of receiving the substitute advertising from Advertiser. The copy may not be altered or modified in any way without Advertiser's prior, written approval.

(b) Operator, at [Operator's] [Advertiser's] sole expense, will be responsible for maintaining, cleaning and the first installation of Advertiser's copy on the Main Scoreboard, the Auxiliary Scoreboard Sign, the Corner Clock, the Concession Stand Displays and in the Concourse. Operator will clean and inspect the Advertiser's advertising and maintain the advertising in a safe and secure manner. Advertiser, at its sole expense, is responsible for producing all copy and installing additional copy subsequent to the first installation on the Main Scoreboard, the Auxiliary Scoreboard Sign, the Corner Clock, the Concession Stand Displays and in the Concourse. Operator will deliver to Advertiser color photographs showing Advertiser's advertisements on the Advertising System promptly after the first and each subsequent installation of new advertising material thereon.

(c) Throughout the term of the Agreement, Operator will ensure that Advertiser's advertising is illuminated during all professional sports events and other events in the Stadium during which the advertising is in place, unless otherwise agreed by Advertiser.

#### 4. Grant of Additional Rights

(a) Operator will provide Advertiser with four adjacent seats in a premium location in the Stadium's \_\_\_\_\_ section for all pre-season, regular season and post-season playoff games of the National Football League's ("NFL") Miami Dolphins ("Dolphins") and Major League Baseball's ("MLB") Florida Marlins ("Marlins");

(b) Operator will provide Advertiser with one VIP parking pass to the Stadium's VIP parking lot for all Dolphins and Marlins games held at the Stadium;

(c) Operator will provide Advertiser with one VIP membership to the Stadium's VIP restaurant club, \_\_\_\_\_;

(d) Operator will provide Advertiser with the use of a private hospitality suite in the Stadium, which will include a wet bar, hostess, closed circuit television, powder room, coat room and seating for a minimum of \_\_\_ people, for two Marlins games and one Dolphins game per Contract Year to be mutually agreed upon by the parties;

(e) Operator will provide Advertiser with the right to purchase ten tickets in a prime location for each NFL championship game (currently known as the "Super Bowl") held at the Stadium during the term of this Agreement at a price equal to the price printed on the tickets. Operator will provide Advertiser with the right to purchase six additional tickets in a prime location for each Super Bowl held at the Stadium or in which the Dolphins participate during the term of this Agreement at a price equal to the price printed on the tickets. Operator will use its best efforts to ensure that tickets purchased by Advertiser pursuant to this subparagraph are for seats adjacent to one another.

(f) Operator will permit Advertiser to place shelf displays for Advertiser's products in a size to be mutually agreed upon by the parties at concession stands throughout the Stadium.

**[(g) If and when requested by Advertiser, Operator will deliver information requested by Advertiser, including the names and addresses of adults purchasing tickets to events to be held at the Stadium.]**

(h) Operator will provide Advertiser, its representatives and third parties designated by Advertiser access to, and exclusive use of, sufficient space in locations in or around the Stadium to be designated by Advertiser for displays to be supplied by Advertiser and sufficient space in additional or alternative locations selected by Advertiser to conduct promotional activities, including display of banners, during the following games during each Contract Year ("Promotion Days"): (i) no less than two weekend series (Friday, Saturday and Sunday) of regular season Marlins games; and (ii) no less than two Dolphins games. The Promotion Days for each Contract Year will be designated by Advertiser, subject to Operator's approval which will not be unreasonably withheld. **[Operator will permit Advertiser during Promotion Days to distribute incentive items, promotional and other materials to smokers 21 years of age and older in areas to be mutually agreed upon by the parties.]**

(i) Operator will not permit or cause to remain in or around the Stadium any advertising or communication of any kind concerning tobacco products or smoking, except by Advertiser or as otherwise required by state or local law or regulation. This Agreement shall not operate to limit the sale or display for sale of tobacco products at concession stands or vending machines in the Stadium or on scorecards. Operator will not, and will use best efforts to ensure that any other entity with authority to promulgate policies within the Stadium does not, establish a policy which restricts smoking in the Stadium to an extent greater than that required by federal, state or local law, regulation, ruling or order.

(j) If any federal, state or local law, regulation, ordinance, ruling or order becomes effective which restricts smoking in the Stadium, Operator will, within 30 days after

the effective date of such law, regulation, ordinance, ruling or order use its best efforts to establish and maintain at Operator's sole cost and expense a sufficient number of designated smoking areas at the Stadium to the extent not prohibited by law, regulation, ordinance, ruling or order. Operator will permit Advertiser to display advertising of its products in locations within the designated smoking areas to be mutually agreed upon between the parties.

5. Term of Agreement

(a) The term of this Agreement will commence on April 1, 1994 and will continue through March 31, 1998. The term is called the "Contract Period." A "Contract Year" is each 12 consecutive month period beginning April 1 and ending March 31 during the Contract Period.

(b) Advertiser has the right to extend the Agreement for the signage and other rights specified in this Agreement for one additional five-year term upon notice to Operator on or before [February 28, 1998] [at a rate to be negotiated in good faith between the parties]. If Advertiser does not extend the term pursuant to this subparagraph, Operator may offer the advertising rights granted in the Agreement to another advertiser. If Operator intends to offer the advertising rights to another advertiser at a rate more favorable than offered by Operator to Advertiser, Operator must first offer, in writing, the more favorable rate to Advertiser and allow Advertiser thirty days within which Advertiser may accept or reject the more favorable terms offered.

6. Payment

(a) In consideration for the advertising rights granted to Advertiser and the services rendered and expenses, fees and commissions incurred by Operator, Advertiser will pay Operator \$275,000, which includes all applicable taxes, for each Contract Year. Payment for the 1994-1995 Contract Year will be made [in two equal installments of \$137,500, the first of which will be paid upon submission of an invoice and delivery of color pictures evidencing the proper installation of Advertiser's advertisements on [\_\_\_\_\_] , and the second of which will be paid upon submission of an invoice on [\_\_\_\_\_]. Payment for the remaining Contract Years for advertising rights granted for the Stadium will be made in two equal installments of \$137,500, the first of which will be paid upon submission of an invoice on [\_\_\_\_\_] , and the second of which will be paid upon submission of an invoice on [\_\_\_\_\_].

7. First Refusal Rights

(a) If and when Operator intends to expand the Advertising System or install additional advertising outside or adjacent to the Stadium, Operator will notify Advertiser, in writing, no less than ninety days in advance of, or as soon as Operator is aware of, the proposed expansion of the Advertising System or installation of additional advertising and permit Advertiser the first opportunity to purchase the advertising space to be added to the Advertising System or the additional advertising to be installed (collectively, the "Additional Advertising"). Advertiser and Operator will negotiate in good faith the payment to be made by Advertiser for the Additional Advertising. If Advertiser chooses to purchase all or a portion of the Additional Advertising, Advertiser and Operator will memorialize their

agreement in a separate writing. If Advertiser and Operator are unable to reach an agreement within sixty days after notice to Advertiser of the Additional Advertising, or if Advertiser delivers notice of its intent not to purchase Additional Advertising, Operator may offer such Additional Advertising to third parties. If Advertiser does not purchase all of the Additional Advertising, and, in Advertiser's judgment, the value of the Agreement to Advertiser is reduced as a result of the Additional Advertising not purchased by Advertiser, Advertiser and Operator will negotiate in good faith for an appropriate reduction in the payment to Operator hereunder based upon the nature and degree of the Additional Advertising, the loss of value to Advertiser arising from the Additional Advertising and such other facts and circumstances as are necessary to fairly compensate Advertiser. If, within sixty days after Advertiser gives notice to Operator of its intention to seek a reduction in the payment hereunder, Advertiser and Operator are unable to reach an agreement with respect to the amount of reduction, Advertiser may terminate the Agreement upon thirty days written notice.

(b) If the Dolphins and the Marlins play their regular season home games at a facility under the control of Operator other than the Stadium ("New Facility"), Operator will grant Advertiser the right to be the first to secure advertising rights in the New Facility that are equal to or greater than Advertiser's advertising rights hereunder and grant Advertiser a period of thirty days in which to accept or reject the Operator's offer. If Advertiser does not accept Operator's offer, Operator will not grant advertising rights in the New Facility to any third party on terms and conditions more favorable to the third party than those offered to Advertiser without first offering Advertiser in writing, the advertising rights on the same of



more favorable terms and granting Advertiser a period of thirty days in which to reject or accept the terms offered.

8. Termination

(a) If Operator fails to perform the Agreement and the failure to perform is not cured within thirty days of written notice of the failure to perform to Operator, Advertiser will be entitled to: (i) terminate this Agreement, effective immediately, by giving written notice to Operator, and Operator will refund to Advertiser all sums, if any, paid for the portion of the Contract Year subsequent to the date of termination, computed as provided in Subparagraph 8(g); or (ii) at Advertiser's sole option, Advertiser and Operator will negotiate in good faith for an appropriate reduction in the payment to Operator based upon the nature and degree of the failure to perform, the loss of value to Advertiser arising from the failure to perform, and such other facts and circumstances as are necessary to fairly compensate Advertiser.

(b) Except as otherwise provided in Subparagraph (a), if either party fails to perform this Agreement and the failure to perform is not cured within thirty days of written notice of the failure to perform to the non-performing party, the other party may, in addition to any other remedies which may under the circumstances be available to it, terminate this Agreement effective immediately, by delivering written notice to the non-performing party.

(c) If any federal, state, municipal or local law, regulation, ordinance, or ruling becomes effective which makes advertising of tobacco products unlawful, generally or as to the type of advertising contemplated by this Agreement, or regulates the smoking of tobacco products or requires a modification of advertising copy that materially reduces the value of

this Agreement, this Agreement may be terminated by the Advertiser as of the date such law, regulation, ordinance, or ruling becomes effective.

(d) If Operator, or a third party, exercises any undue restraint of the advertising by Advertiser, this Agreement may be terminated by Advertiser as of the date such restraint is imposed upon the Advertiser.

(e) Delay in the performance of this Agreement from acts of God or any other cause beyond the control of Operator or because of any strike, work stoppage, picketing, damage or concerted action by any employee or any labor organization, will not constitute a ground for termination, provided, however, if Advertiser experiences a loss of service, Advertiser will receive a pro rata refund from Operator of Advertiser's payment for the Contract Year, based on the portion of the Contract Year during which the loss of service occurred. The amount of the refund to Advertiser will be calculated by dividing the number of professional sports events scheduled to be played in the Stadium during the period of loss of service by the total number of such games scheduled to be played during the Contract Year and multiplying this quotient by the total payment otherwise due from Advertiser for the Contract Year.

(f) Operator will notify Advertiser in writing immediately after Operator receives notice or knowledge that either the Dolphins or the Marlins will no longer play all of their home games at the Stadium. Within ninety days after Advertiser's receipt of Operator's notice, Advertiser will have the right in its sole discretion to either: (i) terminate the Agreement effective immediately after the last game is played at the Stadium by the team which is leaving, or (ii) reduce the amount to be paid by Advertiser per Contract Year by

[fifty percent] effective the day after the last game is played at the Stadium by the team which is leaving.

(g) If this Agreement is terminated for any reason prior to the end of a Contract Year for which Advertiser has paid Operator, Operator will make a pro rata refund to Advertiser. The amount of the refund to Advertiser will be calculated by: (i) dividing the sum of the number of regular season home games played in the Stadium by the Dolphins and the Marlins during the Contract Year for which Advertiser has paid Operator by the sum of number of regular season home games originally scheduled to be played in the Stadium by the Dolphins and the Marlins during the Contract Year, (ii) then multiplying this quotient by the total payment made by Advertiser for the Contract Year, (iii) and then subtracting the product so obtained from the total payment made by Advertiser for the Contract Year, and (iv) refunding the difference to Advertiser.

(h) If Operator becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy, reorganization or arrangement proceeding or defaults in any third party obligation, which default would allow the party to whom the obligation is owed to attempt to foreclose Advertiser from exercising its rights hereunder, Advertiser may immediately terminate the Agreement upon written notice to Operator.

#### 9. Records

Operator, its employees and agents will maintain detailed and accurate books and records of account in connection with its performance of the Agreement. Advertiser or its designated agent may inspect, review and copy Operator's books and records maintained

in connection with its performance of the Agreement at reasonable times during normal business hours upon reasonable, advance notice to Operator and at Advertiser's expense.

10. Confidentiality

Operator, its employees and agents will hold strictly confidential the terms of the Agreement and all information and materials provided by Advertiser to Operator or created by Operator in performing the Agreement. The information and material will remain the property of Advertiser. Operator will not use or disclose the terms of the Agreement or information and materials to third parties without the prior, written consent of Advertiser. Operator's obligation to maintain confidentiality will survive the termination or expiration of the Agreement.

11. Indemnification

(a) Advertiser will defend, indemnify and hold the Operator harmless from any and all loss, liability, claims and demands arising out of the character, content and subject matter of any copy displayed by Advertiser in the Stadium.

(b) Operator indemnifies and holds harmless Advertiser, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs and expenses, including reasonable attorneys' fees, that arise from, or may be attributable to errors, omissions or fault of Operator. Operator's obligation to indemnify and hold harmless will survive the termination of the Agreement.

12. Insurance

Operator will provide comprehensive general liability insurance, including contractual and advertiser liability, and public liability insurance with limits of no less than

\$5,000,000 combined single limit for bodily injury, including personal injury, and property damage, and Operator will deliver to Advertiser certificates of insurance evidencing the coverage and naming Philip Morris Incorporated, its affiliates, employees, representatives and agents as additional insureds. The certificates must provide that Advertiser must have at least thirty days' advance, written notice of any cancellation or modification of the insurance.

13. Ownership

(a) Operator recognizes and acknowledges that the MARLBORO mark and trade dress and the marks and trade dress of all other products of Advertiser or its affiliates and the goodwill associated therewith have great value and are the exclusive property of Advertiser. Operator acknowledges that it has no right in or to the mark and trade dress of MARLBORO or any other product of Advertiser or its affiliates and agrees not to act in any manner that is inconsistent with or damaging to Advertiser's rights in the mark and dress.

(b) Advertiser recognizes and acknowledges that the NFL Dolphins, MLB Marlins and "Joe Robbie Stadium" marks and trade dress and the goodwill associated therewith have great value and are the exclusive property of [Operator]. Advertiser acknowledges that it has no right in or to the marks and trade dress and agrees not to act in any manner that is inconsistent with or damaging to Operator's rights in the marks and dress.

14. Exclusivity

During the term of the Agreement Operator will not, without the prior written consent of Advertiser, render similar services or grant rights to advertise on the Advertising System or on any temporary or event-specific signage to any company or entity whose business competes with any tobacco product of Advertiser.

15. Relationship of the Parties

Operator is and will remain an independent contractor and nothing contained in the Agreement shall be construed to create any relationship of principal and agent or employer and employee between Advertiser and Operator or to make them joint venturers.

16. Miscellaneous

(a) The Agreement and all matters collateral hereto, shall be governed by the laws of the State of New York applicable to agreements made and to be performed entirely within the State of New York.

(b) Operator and Advertiser must comply with all applicable laws, regulations, and ordinances relating to their performance of the Agreement.

(c) This Agreement is the complete agreement between the parties and supersedes any prior oral or written agreement concerning the subject matter.

(d) If any provision of the Agreement is held invalid or unenforceable, the remaining provisions will remain in effect.

(e) The Agreement may not be amended or assigned except in a writing signed by both parties, except that Advertiser may make an assignment to any division or any majority-owned subsidiary of Philip Morris Companies Inc. without Operator's consent. If an assignment occurs, the assignment will not relieve the assigning party of its liabilities and obligations under the Agreement. The Agreement is binding upon successors and assignees of the parties. A waiver by either party of any of the terms and conditions of the Agreement in one or more instances will not constitute a permanent waiver of the terms and conditions.

(f) Any notice required or permitted to be given under the Agreement must be in writing and will be deemed given if sent by United States certified mail, return receipt requested, postage fully prepaid, to the addresses set forth below, or to such other person or address as either party may designate by written notice to the other party.

IF TO OPERATOR: Team Headquarters, Inc.  
322 Vista Del Mar  
Redondo Beach, California 90277-5485  
Attention: Michael Kasino, President

IF TO ADVERTISER: Philip Morris Incorporated  
120 Park Avenue  
New York, New York  
Attention: Manager, Special Media

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date and year first above written.

TEAM HEADQUARTERS, INC.

PHILIP MORRIS INCORPORATED

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Taxpayer ID# \_\_\_\_\_

Filing Status \_\_\_\_\_